

EXHIBIT A

DOCID	To	FROM	CC	SUBJECT LINE	TOPIC	DOCDATE	CUSTODIAN	DHSHQ Privilege	DHSHQ Priv Descriptions
DACA_RLIT00000001					DHS memorandum regarding executive discretion in immigration	8/1/2017	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy
DACA_RLIT00000002					Deliberations on talking points regarding DACA	8/11/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy
DACA_RLIT00000003					Deliberations on talking points regarding DACA	8/14/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy
DACA_RLIT00000006					Pre-briefing document for meeting regarding status and future of DACA	8/23/2017	Duke, Elaine C	AC - Attorney Client Privilege;WP - Work Product;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00000007					DHS memorandum regarding OLC memo on DAPA	8/22/2017	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00000015					Deliberations on talking points regarding DACA	9/5/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program
DACA_RLIT00000025					Notes from deliberations regarding DACA	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding rescission of DACA program
DACA_RLIT00000027					Background information provided for deliberations regarding DACA	unknown	Duke, Elaine C	AC - Attorney Client Privilege;WP - Work Product;DP - Deliberative Process	Deliberations regarding DACA policy; Draft document created litigation
DACA_RLIT00000028					Notes on DHS memorandum regarding immigration reform priorities and DACA	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy
DACA_RLIT00000031					Notes from deliberations regarding DACA policy	9/5/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy
DACA_RLIT00000033					Notes from deliberations on talking points regarding DACA	9/5/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission
DACA_RLIT00000034					Deliberations on talking points regarding DACA	9/5/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission
DACA_RLIT00000057					Notes on article regarding DACA program	8/15/2012	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program
DACA_RLIT00000059					DHS memorandum containing information for use in deliberations regarding DACA, immigration enforcement policy, and other matters in litigation	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy; deliberations regarding immigration enforcement policy and matters in litigation
DACA_RLIT00000061					Notes on deliberations on talking points regarding DACA and other immigration enforcement priorities	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy
DACA_RLIT00000066					Notes on Texas v. United States decision by the Fifth Circuit	11/25/2015	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy; Deliberations regarding rescission of DACA program

DACA_RLIT00000067					Notes on DHS memorandum summarizing deliberations regarding rescission of DACA and how it would be implemented	8/24/2017	Duke, Elaine C	DP - Deliberative Process;EP - Executive Privilege	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00000068					Notes on media articles regarding DACA	multiple	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000069					Draft White House memorandum regarding litigation related to DACA	8/23/2017	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process;EP - Executive Privilege	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00000070					Notes on participant list for deliberations regarding DACA	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program
DACA_RLIT00000072					Notes on prior statements by the President regarding DACA	8/24/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding rescission of DACA program
DACA_RLIT00000073					Notes on pre-briefing document for meeting regarding status and future of DACA	8/23/2017	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00000074					Notes on memorandum regarding options for DACA	unknown	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00000075					Notes on DHS memorandum discussing future of DACA	unknown	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00000102	John K. Mashburn (WH); Matthew J. Flynn (WH); Anthony M. Paranzino (WH)	Frank Wuco (DHS)	Elizabeth Neumann (DHS); Chad Wolf (DHS)	170831 DHS Daily Cabinet Affairs Report	Email regarding Cabinet report containing deliberations on DACA	8/31/2017	Duke, Elaine C	DP - Deliberative Process; EP - Executive Privilege	Deliberations regarding DACA policy

DACA_RLIT00000103					Cabinet report containing deliberations on DACA	8/31/2017	Duke, Elaine C	DP - Deliberative Process; EP - Executive Privilege	Deliberations regarding DACA policy
DACA_RLIT00000226	Elaine C. Duke (DHS)	Chad Wolf (DHS)		Memo + Outline	Email regarding draft DHS memoranda discussing rescission of DACA and implementation	9/3/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000227					Draft DHS memorandum regarding rescission of DACA	9/3/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000228					Draft DHS memorandum regarding implementation of rescission of DACA	9/3/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program; Deliberations regarding implementation of DACA rescission
DACA_RLIT00000230	Kevin K. McAleenan (DHS); Elaine C. Duke (DHS); Claire Grady (DHS); Gene Hamilton (DHS)	Chad Wolf (DHS)	Thomas Homan (DHS)	RE: Preparations for Pending Policy Announcement	Email discussion regarding strategies for implementing rescission of DACA	9/4/2017	Duke, Elaine C	PII - Personal Privacy;DP - Deliberative Process	Deliberations regarding implementation of DACA rescission
DACA_RLIT00000231	Elaine C. Duke (DHS)	Chad Wolf (DHS)		RE: Memo + Outline	Email discussions regarding rescission of DACA and talking points regarding rescission	9/4/2017	Duke, Elaine C	AC - Attorney Client Privilege;PII - Personal Privacy;DP - Deliberative Process	Deliberations regarding rescission of DACA program; Seeking or providing legal advice regarding rescission of DACA program; Contains legal advice provided by counsel
DACA_RLIT00000232	Kevin K. McAleenan (DHS); Elaine C. Duke (DHS); Claire Grady (DHS); Gene Hamilton (DHS)	Chad Wolf (DHS)	Thomas Homan (DHS)	RE: Preparations for Pending Policy Announcement	Email discussion regarding strategies for implementing rescission of DACA	9/4/2017	Duke, Elaine C	PII - Personal Privacy;DP - Deliberative Process	Deliberations regarding implementation of DACA rescission
DACA_RLIT00000234	Elaine C. Duke (DHS)	Chad Wolf (DHS)		RE: Calls	Email discussion of deliberations regarding rescission of DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process;PII - Personal Privacy	Deliberations regarding rescission of DACA program
DACA_RLIT00000235	Elaine C. Duke (DHS)	Chad Wolf (DHS)		RE: Memo + Outline	Email regarding draft DHS memoranda discussing rescission of DACA and implementation	9/4/2017	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process	Deliberations regarding rescission of DACA program; Seeking or providing legal advice regarding rescission of DACA program; Contains legal advice provided by counsel
DACA_RLIT00000236					Draft DHS memorandum regarding rescission of DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000237	Elaine C. Duke (DHS)	Chad Wolf (DHS)		RE: Draft Memo	Email discussion regarding draft memorandum discussing rescission of DACA	9/4/2017	Duke, Elaine C	PII - Personal Privacy;DP - Deliberative Process	Deliberations regarding rescission of DACA program;
DACA_RLIT00000238	Elaine C. Duke (DHS)	Chad Wolf (DHS)	Chad Wolf (DHS)	AS1 Public Statement	Email regarding draft talking points for DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000239					Draft talking points for DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000240	Elaine C. Duke (DHS)	Chad Wolf (DHS)		RE: AS1 Statement to DHS Employees	Email regarding draft talking points for DACA	9/4/2017	Duke, Elaine C	PII - Personal Privacy;DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000241	Elaine C. Duke (DHS)	Chad Wolf (DHS)		RE: AS1 Statement to DHS Employees	Email regarding draft talking points for DACA	9/4/2017	Duke, Elaine C	PII - Personal Privacy;DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000242	Elaine C. Duke (DHS)	Chad Wolf (DHS)	Chad Wolf (DHS)	AS1 Statement to DHS Employees	Email regarding draft talking points for DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000243					Draft talking points for DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000245	Elaine C. Duke (DHS)	Chad Wolf (DHS)		FW: Draft Memo	Email discussion regarding draft DHS memorandum discussing rescission of DACA	9/4/2017	Duke, Elaine C	AC - Attorney Client Privilege;PII - Personal Privacy;DP - Deliberative Process	program;Seeking or providing legal advice regarding rescission of DACA program; Contains legal advice provided by counsel
DACA_RLIT00000246					Draft DHS memorandum regarding rescission of DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000247	Elaine C. Duke (DHS)	Chad Wolf (DHS)		DHS Press Release	Email regarding draft press release discussing DACA rescission	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000248					Draft press release discussing DACA rescission	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000450	John F. Kelly (WH); Kirstjen M. Nielsen (WH)	Elaine C. Duke (DHS)	Chad Wolf (DHS)	DACA	Email discussion regarding potential rescission of DACA and implementation	8/24/2017	Duke, Elaine C	DP - Deliberative Process;EP - Executive Privilege	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program

DACA_RLIT00000451	Thomas Homan (DHS)	Elaine C. Duke (DHS)	Chad Wolf (DHS); Elizabeth Neumann (DHS)	Article	Email discussion regarding information for deliberations on potential rescission of DACA	8/24/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000513	Chad Wolf (DHS); Jonathan Hoffman (DHS); Gene Hamilton (DHS)	Elaine C. Duke (DHS)		For our discussions	Email discussion regarding information for deliberations on DACA	8/9/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy
DACA_RLIT00000695	Chad Wolf (DHS)	Elaine C. Duke (DHS)		RE: Memo + Outline	Email discussion regarding draft DHS memorandum discussing rescission of DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000697	Chad Wolf (DHS)	Elaine C. Duke (DHS)		RE: Memo + Outline	Email discussion regarding draft DHS memorandum discussing rescission of DACA	9/4/2017	Duke, Elaine C	AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process	Deliberations regarding rescission of DACA program; Seeking or providing legal advice regarding rescission of DACA program; Contains legal advice provided
DACA_RLIT00000698	Kevin McAleenan (DHS)	Elaine C. Duke (DHS)		RE: Preparations for Pending Policy Announcement	Email discussion regarding potential rescission of DACA and implementation	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding implementation of DACA rescission
DACA_RLIT00000703	Chad Wolf (DHS)	Elaine C. Duke (DHS)		Calls	Email discussion on deliberations regarding DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000705	Chad Wolf (DHS)	Elaine C. Duke (DHS)		RE: Draft Memo	Email discussion regarding draft DHS memorandum discussing rescission of DACA	9/4/2017	Duke, Elaine C	AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process	Deliberations regarding rescission of DACA program; Seeking or providing legal advice regarding rescission of DACA program; Contains legal advice provided
DACA_RLIT00000706	Chad Wolf (DHS)	Elaine C. Duke (DHS)		RE: AS1 Statement to DHS Employees	Email regarding draft talking points for DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000707	Chad Wolf (DHS)	Elaine C. Duke (DHS)		RE: AS1 Public Statement	Email regarding draft talking points for DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000708	Chad Wolf (DHS)	Elaine C. Duke (DHS)		RE: AS1 Statement to DHS Employees	Email regarding draft talking points for DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000709	Chad Wolf (DHS)	Elaine C. Duke (DHS)		RE: AS1 Statement to DHS Employees	Email regarding draft talking points for DACA	9/4/2017	Duke, Elaine C	PII - Personal Privacy; DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00000711	Chad Wolf (DHS)	Elaine C. Duke (DHS)		RE: AS1 Statement to DHS Employees	Email regarding draft talking points for DACA	9/5/2017	Duke, Elaine C	PII - Personal Privacy; DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001249	Elaine C. Duke (DHS); Claire Grady (DHS); Chad Wolf (DHS); Gene Hamilton (DHS)	Kevin McAleenan (DHS)	Thomas Homan (DHS)	Preparations for Pending Policy Announcement	Email discussion regarding potential rescission of DACA and implementation	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding implementation of DACA rescission
DACA_RLIT00001250	Chad Wolf (DHS); Elaine C. Duke (DHS); Claire Grady (DHS); Gene Hamilton (DHS)	Kevin McAleenan (DHS)	Thomas Homan (DHS)	RE: Preparations for Pending Policy Announcement	Email discussion regarding potential rescission of DACA and implementation	9/4/2017	Duke, Elaine C	PII - Personal Privacy; DP - Deliberative Process	Deliberations regarding implementation of DACA rescission
DACA_RLIT00001372	Kevin McAleenan (DHS); Elaine C. Duke (DHS); Claire Grady (DHS); Chad Wolf (DHS); Gene Hamilton (DHS)	Thomas Homan (DHS)		RE: Preparations for Pending Policy Announcement	Email discussion regarding potential rescission of DACA	9/4/2017	Duke, Elaine C	PII - Personal Privacy; DP - Deliberative Process	Deliberations regarding implementation of DACA rescission
DACA_RLIT00001396	Elaine C. Duke (DHS); Chad Wolf (DHS); Joseph Maher (DHS); Dimple Shah (DHS)	Gene Hamilton (DHS)		**CLOSE HOLD**	Email discussion regarding draft letter discussing rescission of DACA	9/4/2017	Duke, Elaine C	AC - Attorney Client Privilege; DP - Deliberative Process; EP - Executive Privilege	Deliberations regarding rescission of DACA program; Contains legal advice provided by counsel and information from Executive review
DACA_RLIT00001397					Draft letter discussing rescission of DACA	9/4/2017	Duke, Elaine C	AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process	Deliberations regarding rescission of DACA program; Seeking or providing legal advice regarding rescission of DACA program; Contains legal advice provided by counsel
DACA_RLIT00001399	Elaine C. Duke (DHS); Chad Wolf (DHS)	Gene Hamilton (DHS)		Draft Memo	Email discussion regarding draft DHS memorandum discussing rescission of DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001400					Draft DHS memorandum discussing rescission of DACA	9/4/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001586	Nancy Clark (DHS)	Nancy Clark (DHS)		SIGNIFICANT CORRESPONDENCE REPORT: 08.02.17	Internal email summarizing correspondence from Rep. Lewis regarding DACA	8/2/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy

DACA_RLIT00001873					Notes on DHS memorandum summarizing deliberations regarding rescission of DACA and how it would be implemented	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program
DACA_RLIT00001874					Notes on DHS memorandum regarding OLC memo on DACA	unknown	Duke, Elaine C	AC - Attorney Client Privilege;WP - Work Product;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00001875					Notes on pre-briefing document for meeting regarding status and future of DACA	8/23/2017	Duke, Elaine C	AC - Attorney Client Privilege;WP - Work Product;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00001876					Draft White House memorandum regarding litigation related to DACA	8/24/2017	Duke, Elaine C	AC - Attorney Client Privilege;WP - Work Product;DP - Deliberative Process;EP - Executive Privilege	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding litigation risk;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00001877					Notes on CNN article discussing DACA	8/29/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001878					Notes on Washington Post article discussing DACA	9/2/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001879					Notes on DHS memorandum regarding potential rescission of DACA and implementation	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding DACA policy;Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program

DACA_RLIT00001880					Notes on DHS memorandum regarding OLC memo on DACA	unknown	Duke, Elaine C	AC - Attorney Client Privilege;WP - Work Product;DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation;Deliberations regarding DACA policy;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy
DACA_RLIT00001881					Notes on CNN article discussing DACA	9/1/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001882					Notes on media articles regarding DACA	8/24/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001883					Notes on Politico article discussing DACA	8/24/2017	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001885					Notes on 2014 OLC memo to the Secretary of DHS and counsel to the President regarding prioritization of removal	11/19/2014	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program
DACA_RLIT00001887					Notes from deliberations regarding DACA rescission	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program
DACA_RLIT00001888					Notes from deliberations regarding DACA rescission	9/1/2017	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process	Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding implementation of DACA; rescission;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00001889					Notes on draft memorandum regarding rescission of DACA and implementation	unknown	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program
DACA_RLIT00001890					Notes from deliberations regarding DACA rescission	8/30/2017	Duke, Elaine C	AC - Attorney Client Privilege;DP - Deliberative Process	Deliberations regarding implementation of DACA rescission;Deliberations regarding rescission of DACA program;Seeking or providing legal advice regarding DACA policy;Seeking or providing legal advice regarding implementation of DACA rescission;Seeking or providing legal advice regarding rescission of DACA program
DACA_RLIT00001891					Notes on media articles regarding DACA	multiple	Duke, Elaine C	DP - Deliberative Process	Deliberations regarding rescission of DACA program

EXHIBIT B

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

August 14, 2017

Dear President Trump:

As immigration law teachers and scholars, we write to express our position that the executive branch has legal authority to implement Deferred Action for Childhood Arrivals (DACA 2012). This letter provides legal analysis about DACA 2012. In our view, there is no question that DACA 2012 is a lawful exercise of prosecutorial discretion. Our conclusions are based on years of experience in the field and a close study of the U.S. Constitution, administrative law, immigration statutes, federal regulations and case law. As the administration determines the future of DACA 2012, understanding its legal foundation and history is critical.

DACA 2012 was announced by the President, and implemented in a memorandum by the Secretary of Homeland Security, on June 15, 2012.¹ It enables qualifying individuals to request a temporary reprieve from removal known as “deferred action.” Deferred action is one form of prosecutorial discretion in immigration law and has been used for decades by the Department of Homeland Security (DHS) (and formerly the Immigration and Naturalization Service (INS)) and over several administrations.²

Whether a requesting individual receives deferred action under DACA 2012 is at the discretion of DHS. Qualifying individuals may request DACA 2012 if they came to the United States before the age of sixteen; are currently in school or have graduated; have continuously resided in the United States since June 15, 2007; have not been convicted of a felony, “significant misdemeanor,” or three or more non-significant misdemeanors; do not otherwise pose a threat to public safety or national security; and otherwise warrant protection as a matter of discretion.³

¹ See Barack Obama, President, Remarks by the President on Immigration (June 15, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>; Memorandum from Janet Napolitano, Sec'y, Dep't of Homeland Sec., to David V. Aguilar, Acting Comm'r, U.S. Customs & Border Prot. et al. (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

² See Shoba Sivaprasad Wadhia, *Beyond Deportation The Role of Prosecutorial Discretion in Immigration Cases* 14-32 (2015) (“Wadhia, *Beyond Deportation*”); Shoba Sivaprasad Wadhia, *The History of Prosecutorial Discretion in Immigration Law*, 64 Am. U. L. Rev. 1285, 1296-97 (2015) (“Wadhia, *History of Prosecutorial Discretion*”); Michael A. Olivas, *Dreams Deferred: Deferred Action, Prosecutorial Discretion, and the Vexing Case(s) of DREAM Act Students*, 21 Wm. & Mary Bill of Rts. J. 463, 475-92 (2012); Shoba Sivaprasad Wadhia, *Sharing Secrets: Examining Deferred Action and Transparency in Immigration Law*, 10 U.N.H. L. Rev. 1, 21-22 (2012) (“Wadhia, *Sharing Secrets*”).

³ DHS requires that DACA applicants: “1. Were under the age of 31 as of June 15, 2012; 2. Came to the United States before reaching your 16th birthday; 3. Have continuously resided in the United States since June 15, 2007, up to the present time; 4. Were physically present in the United States on June 15, 2012, and at the time of making your

Individuals who are granted DACA 2012 receive a two-year period in deferred action and also gain eligibility to apply for employment authorization.

The legal authority for DACA 2012 originates from the U.S. Constitution. Article II, Section Three (the Take Care Clause) states in part that the President “shall take Care that the Laws be faithfully executed.”⁴ Inherent in the function of the “Take Care Clause” is the ability of the President to target some immigration cases for removal and to use prosecutorial discretion favorably in others. As described by the U.S. Supreme Court:

[W]e recognize that an agency’s refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor in the Executive Branch not to indict—a decision which has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to “take Care that the Laws be faithfully executed.”⁵

As early as 1976, former INS General Counsel Sam Bernsen executed a legal opinion that identified the Take Care Clause as the primary source for prosecutorial discretion in immigration matters. He wrote: “The ultimate source for the exercise of prosecutorial discretion in the Federal Government is the power of the President. Under Article II, Section 1 of the Constitution, the executive power is vested in the President. Article II, Section 3, states that the President ‘shall take care that the laws be faithfully executed.’”⁶

The U.S. Supreme Court has also recognized the role of prosecutorial discretion in the immigration system. In *Arizona v United States*, the Court noted that “[a] principal feature of the removal system is the broad discretion exercised by immigration officials Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all”⁷

Congress created the Immigration and Nationality Act (the Act or INA) in 1952 and it remains the primary statutory authority for immigration law today.⁸ Importantly, Congress has delegated most discretionary immigration functions to DHS. Section 103 of the Act provides that

request for consideration of deferred action with USCIS; 5. Had no lawful status on June 15, 2012; 6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and 7. Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.” *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. Citizenship & Immigr. Servs., <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca> (last updated Dec. 22, 2016).

⁴ U.S. Const. art. II, § 3.

⁵ Shoba Sivaprasad Wadhia, *In Defense of DACA, Deferred Action, and the DREAM Act*, 91 Tex. L. Rev. See Also 59, 63 (2013) (quoting *Heckler v. Chaney*, 470 U.S. 821, 832 (1985)).

⁶ Memorandum from Sam Bernsen, Gen. Counsel, Immigration & Naturalization Serv., to Comm’r, Immigration & Naturalization Serv. 2 (July 15, 1976), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf>.

⁷ 567 U.S. 387, 396.

⁸ See Pub. L. No. 82-414, 66 Stat. 163 (codified as amended in scattered sections of 8 U.S.C.); *Immigration and Nationality Act*, U.S. Citizenship & Immigr. Servs., <https://www.uscis.gov/laws/immigration-and-nationality-act> (last updated Sept. 10, 2013).

“[t]he Secretary of Homeland Security shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens”⁹

Congress has repeatedly acknowledged that the Executive has power to grant “deferred action” for certain categories of people such as victims of crimes and human trafficking.¹⁰ Additionally, previous administrations have announced deferred action programs to protect qualifying individuals. For example, under the George W. Bush administration, U.S. Citizenship and Immigration Services (part of DHS) announced a deferred action program for students affected by Hurricane Katrina¹¹ and later developed a program for the widows of U.S. citizens.¹² Moreover, Congress also recognized legal authority for immigration prosecutorial discretion in INA § 242(g), which bars judicial review of three specific prosecutorial discretion decisions by the agency: to commence removal proceedings, to adjudicate cases, and to execute removal orders.¹³

Another important legal source for deferred action is Title 8 of the Code of Federal Regulations. Section 274a.12(c)(14) dates to 1981 and is the product of notice and comment rulemaking.¹⁴ This regulation specifically identifies deferred action by name and allows individuals granted deferred action to apply for work authorization upon a showing of “economic necessity.”¹⁵ Over the last two decades, thousands of individuals have applied for and received work authorization based on a deferred action grant.¹⁶

There are also agency guidance documents related to deferred action issued by DHS (and formerly INS) over the last four-plus decades. The 1976 legal opinion by former INS General Counsel Sam Bernsen cites to the Take Care Clause of the U.S. Constitution, as well as statutory and case law from as early as 1825 to affirm the exercise of prosecutorial discretion in immigration.¹⁷ It was around this time when INS published its first guidance on deferred action in the form of an “Operations Instruction.” This “Operations Instruction” stated “(ii) Deferred action. In every case where the district director determines that adverse action would be unconscionable because of the existence of appealing humanitarian factors, he shall recommend consideration for deferred action category.”¹⁸ Since 1975, deferred action has been identified in several subsequent

⁹ 8 U.S.C. § 1103(a)(1) (2012).

¹⁰ See 8 U.S.C. § 1227(d)(4) (2012), INA § 237(d)(4).

¹¹ See Press Release, U.S. Citizenship and Immigration Services, USCIS Announces Interim Relief for Foreign Students Adversely Impacted by Hurricane Katrina (Nov. 25, 2005), https://www.uscis.gov/sites/default/files/files/pressrelease/F1Student_11_25_05_PR.pdf; see also 70 Fed. Reg. 70,992 (Nov. 25, 2005).

¹² See DHS Establishes Interim Relief for Widows of U.S. Citizens, U.S. Department of Homeland Security (June 9, 2009), <http://www.dhs.gov/news/2009/06/09/dhs-establishes-interim-relief-widows-us-citizens>. See generally Wadhia, *Beyond Deportation*, *supra*, ch.4.

¹³ 8 U.S.C. § 1252(g) (2012).

¹⁴ See 8 C.F.R. § 274a.12(c)(14); *Unconstitutionality of Obama’s Executive Actions on Immigration: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. (2015) (statement of Stephen H. Legomsky); *Reining in Amnesty: Texas v. U.S. and Its Implications: Hearing Before the Subcomm. on Oversight, Agency Action, Fed. Rights & Fed. Courts, S. Comm. on the Judiciary*, 114th Cong. (2015) (statement of Jill E. Family); Shoba Sivaprasad Wadhia, *Demystifying Employment Authorization and Prosecutorial Discretion in Immigration Cases*, 6 Colum. J. Race & L. 1 (2016) (“Wadhia, *Demystifying Employment Authorization*”).

¹⁵ 8 C.F.R. § 274a.12(c)(14).

¹⁶ See Wadhia, *Demystifying Employment Authorization*, *supra*, at 25.

¹⁷ Memorandum from Sam Bernsen, *supra*, at 2.

¹⁸ (Legacy) Immigration and Naturalization Service, Operations Instructions, O.I. § 103.1(a)(1)(ii) (1975); see also

guidance documents.¹⁹ Guidance documents are common in administrative law and are a recognized form of agency action under the Administrative Procedure Act.²⁰

At tension with the aforementioned body of law is a letter sent by ten state Attorneys General to the administration requesting that DACA 2012 be rescinded.²¹ This letter refers to DACA 2012 as “unlawful” and does so without citing to the foundational legal authorities behind deferred action. Furthermore, the letter conflates deferred action, “lawful presence” and work authorization in ways that are legally unsound and unclear. Finally, the letter itself shoehorns arguments into *Texas v. United States*, a lawsuit that never included the core of DACA 2012, and instead involved policies that are at this point in time moot.²² Moreover, a previous lawsuit challenging DACA 2012 failed on jurisdictional grounds and would inevitably inform any future challenge.²³

While the scope of this letter is to describe the legal foundation for DACA 2012, it is important to highlight the history and inevitability of prosecutorial discretion in immigration enforcement. Prosecutorial discretion exists because the government has limited resources and lacks the ability to enforce the law against the entire undocumented population. Recognizing this resource limitation, Congress has charged the Secretary of DHS with “establishing national immigration enforcement policies and priorities.”²⁴ Prosecutorial discretion and policies like DACA 2012 also have a humanitarian dimension, and such factors have long driven deferred action decisions. Finally, DACA 2012 has been an unqualified policy success, allowing over three-quarters of a million recipients to continue their education, receive professional licensing, find employment, and pay taxes into Social Security and other tax coffers.²⁵

Wadhia, *Beyond Deportation*, *supra* at ch. 2; Shoba Sivaprasad Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 Conn. Pub. Int. L.J. 243, 247-52 (2010); Shoba Sivaprasad Wadhia, *Sharing Secrets*, *supra*, at 9-11 (2012); Leon Wildes, *John Lennon v. The U.S.A.: The Inside Story of the Most Bitterly Contested and Influential Deportation Case in United States History* (2016).

¹⁹ Wadhia, *History of Prosecutorial Discretion*, *supra*; Shoba Sivaprasad Wadhia, *The Aftermath of United States v. Texas: Rediscovering Deferred Action*, Yale J. on Reg.: Notice & Comment Blog (Aug. 8, 2017, 12:19 PM), <http://yalejreg.com/nc/the-aftermath-of-united-states-v-texas-rediscovering-deferred-action-by-shoba-sivaprasad-wadhia/>.

²⁰ *Reining in Amnesty: Texas v. U.S. and Its Implications: Hearing Before the Subcomm. on Oversight, Agency Action, Fed. Rights & Fed. Courts, S. Comm. on the Judiciary*, 114th Cong. (2015) (statement of Jill E. Family)

²¹ Letter from Ken Paxton, Att'y Gen. of Texas et al., to Jefferson B. Sessions, Att'y Gen. of the United States (June 29, 2017) https://www.texasattorneygeneral.gov/files/epress/DACA_letter_6_29_2017.pdf?cachebuster:5.

²² *Texas v. United States* involves challenges to two deferred action policies announced two years after the original DACA policy was announced. The two later policies, popularly known as “DACA +” and “DAPA,” were enjoined by a federal district court in Brownsville, Texas, and later by the Fifth Circuit Court of Appeals. *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015). Although the Supreme Court reviewed the case, the Court was equally divided. *United States v. Texas*, 136 S. Ct. 2271 (2016) (per curiam). A majority of the Supreme Court never ruled on the case, and the litigation never reached beyond the preliminary injunction stage. On June 15, 2016, DHS issued a memorandum rescinding DAPA. Memorandum from John F. Kelly, Dep't of Homeland Security Sec'y, to Kevin K. McAleenan, Acting Comm'r U.S. Customs and Border Prot., et al., (June 15, 2017), <https://www.dhs.gov/sites/default/files/publications/DAPA%20Cancellation%20Memo.pdf>.

²³ *Crane v. Johnson*, 783 F.3d 244, 252 (5th Cir. 2015).

²⁴ 6 U.S.C. § 202(5) (2016).

²⁵ See, e.g., Tom K. Wong et al., *New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes*, Center for American Progress (Oct. 18, 2016), <https://www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/>.

This letter outlines the legal foundation for DACA 2012 and confirms that maintaining such a policy falls squarely within the Executive's discretion. The legal authority for the Executive Branch to operate DACA 2012 is crystal clear. As such, choices about its future would constitute a policy and political decision, not a legal one. As the administration decides how best to address DACA 2012, we hope that the legal foundation and history for this policy is addressed wisely and that decisions on the future of DACA 2012 are made humanely.

Thank you for your attention.

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